IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRTIETH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE DR JUSTICE G.YETHIRAJULU

WRIT PETITION NO : 20493 of 2004

Between:

Nallana Lakshmana Murthy, S/o. Saradhi,
R/o. Palasa, Srikakulam District.

..... PETITIONER

AND

1 The District Collector, Srikakulam District, Srikakulam.
2 The Government of Andhra Pradesh, Rep. by its Chief Secretary,

Secretariat, Hyderabad.
3 The Superintendent of Central Prison, Visakhapatnam.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue any appropriate Writ of Habeas Corpus under Art 226 of the Constitution of India directing the respondents to produce the detenu Sri Nallana Rama Rao S/o. Late Murali, now detained in Central Jail, Visakhapatnam, before this Hon'ble Court and he may be ordered to be released forthwith after declaring his detention as illegal and void.

Counsel for the Petitioner: MR.M.VISWANADHAM

Counsel for the Respondents: THE ADVOCATE GENERAL

The Court made the following:

HONOURABLE MR JUSTICE BILAL NAZKI

AND

HONOURABLE DR. JUSTICE G.YETHIRAJULU

WRIT PETITION NO.20493 OF 2004

ORAL ORDER (Per Dr.GYR,J):

This is a writ of Habeas Corpus filed by the petitioner under Article 226 of the Constitution of India praying to direct the respondents to cause production of the detenu Sri Nallana Rama Rao now detained in Central Prison, Visakhapatnam, before this Court and to order his release forthwith.

2. The petitioner is the co-brother of the detenue. The first respondent passed an order on 06.10.2004 under Sections 3 (1) and (2) read with Section 2(a) (b) of A.P.Prevention of Dangerous Activities and Boot Leggers, Dacoits, Drug

Offenders, Goondas, Immoral Traffic and Land Grabbers Act, 1986 (1/86) on the ground that the detenu was involved in committing offences of illicit storage, transportation and sale and organization of excise crime in contravention of Section 8 (e) read with 7 (a) of the A.P. Prohibition Act and the said order was passed with a view to prevent grave/widespread danger to life and public health and to maintain the public order.

3. The learned counsel for the petitioner Sri M.Viswanadham submitted that the detaining authority has passed the order of detention mechanically without application of mind on vague, irrelevant and non-existing grounds and the same is liable to be quashed. The detaining authority relied on two incidents dated 29.05.2003 and 11.06.2004 as grounds of detention and pleaded that there is no rational nexus between the incidents referred to above and the satisfaction arrived at by the detaining authority. He further submitted that the first incident dated 29.05.2003 is not proximate to the second incident. The learned counsel for the petitioner further submitted that as there is a mention in the report of the analyst that the contraband in both the grounds is only illicit distilled liquor and as there is no mention that the said I.D. Liquor is injurious to health and unfit for human consumption, the order of detention is liable to be quashed.

4. The learned Advocate General resisted the petition and submitted that the grounds mentioned in the order are valid, therefore, the order is sustainable under law.

5 . The first incident mentioned in the grounds of detention was dated 29.05.2003. The second incident was dated 11.06.204. There was more than one-year gap between the two incidents, therefore, the first incident has to be treated as stale. Though the second incident is proximate to the date of the order of detention on account of the staleness of the first incident, the order of detention cannot be sustained. As per the decision of the Supreme Court in **The Collector and District Magistrate, West Godavari District, Eluru, Andhra Pradesh and others v . Sangala Kondamma** which was delivered on 09.12.2004 in Crl.A.No.1451 of 2004 arising out of S.L.P.(Criminal) No.5341 of

2003, if the incidents mentioned in the grounds of detention are proximate to each other, the fact that initial incidents are not proximate to the order of detention would not make the order of detention bad.

6. But in the case on hand, the first incident is not proximate to the second incident. The order of the detention passed by the first respondent indicates that the order was passed by taking into consideration both the grounds at the time of satisfying that there are sufficient grounds for ordering detention. Had the incident No.1 been incorporated in the grounds of detention, the detaining authority would have arrived at a different conclusion. But due to inclusion of incident No.1, the detaining authority came to a conclusion that this is a fit case for detention.

7. We therefore, hold that the order of detention is not sustainable under law. The aspect whether the prosecution has to establish that the I.D. Liquor is injurious to health is under consideration of a Full Bench of this Court, therefore, we do not wish to express any opinion on this aspect in this writ petition.

8. The writ petition is accordingly allowed. The order of detention dated 06.10.2004 is quashed. The Concerned authorities are directed to release the detenue forthwith, if he is not required in any other case.

BILAL NAZKI, J

30th December 2004 ---------- SKM Dr. G.YETHIRAJULU, J

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this

Thursday the 30th day of December, Two thousand and Four.

REGISTRAR

To

1 The District Collector, Srikakulam District, Srikakulam.
2 The Government of Andhra Pradesh, Rep. by its Chief Secretary,

Secretariat, Hyderabad.
3 The Superintendent of Central Prison, Visakhapatnam.

4 2CCs to the Advocate General, High Court Buildings,

Hyderabad. (OUT)

5 2CD copies

HONOURABLE MR JUSTICE BILAL NAZKI

AND

HONOURABLE DR. JUSTICE G.YETHIRAJULU

WRIT PETITION NO.20493 OF 2004

Dated: 30.12.2004